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**Hearing Date: July 22, 2010**

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*Attorneys for Spartech Polycom*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re:	:	Chapter 11:
	:	
DELPHI CORPORATION, <i>et al.</i> ,	:	Case No. 05-44481 (RDD)
	:	Jointly Administered
-----X	:	
DELPHI CORPORATION	:	
	:	Adv. Pro. No. 07-02639 (RDD)
Plaintiff,	:	
	:	
-against-	:	
	:	
SPARTECH POLYCOM,	:	
	:	
Defendant.	:	
-----X	:	

**MOTION TO DISMISS FILED BY DEFENDANT  
SPARTECH POLYCOM SEEKING AN ORDER (I) VACATING PRIOR ORDERS  
ESTABLISHING PROCEDURES FOR ADVERSARY PROCEEDINGS THAT VIOLATE  
PROCEDURAL DUE PROCESS, (II) DISMISSING THE ADVERSARY PROCEEDING  
WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 12(b) AND FED. R. BANKR. P. 7012(b),  
OR (III) DISMISSING THE ADVERSARY PROCEEDING  
ON THE GROUNDS OF LACHES, RES JUDICATA OR JUDICIAL ESTOPPEL**

Spartech Polycom (“Spartech”) by its undersigned attorneys, respectfully states:

1. Spartech respectfully requests that this Court immediately dismiss with prejudice the complaint (the “Complaint”) filed in this adversary proceeding, Adv. Pro. No. 07-02639 by Delphi Corporation and its affiliated debtors (collectively, “Delphi” or “Debtors”) against Defendant Spartech Polycom because Delphi’s actions in filing the Complaint, concealing its existence, and attempting unilaterally and without notice to extend the statute of limitations for the alleged cause of action set forth in the Complaint violate fundamental notions of due process and constitute impermissible attempts to trample the rights of Spartech (and other adversary defendants).

2. More particularly, the Complaint should be dismissed for at least the following main reasons:

A. The series of orders entered by the Court permitting the Complaint to be filed under seal and purportedly extending the time for Delphi to serve the Complaint and related summons upon Spartech are void as against Spartech (collectively, and as described more particularly in Spartech’s accompanying Memorandum of Law, the “Extension Orders”) because each Extension Order violated procedural due process in that, among other things, each was entered without Spartech having notice or an opportunity to be heard.

B. The Complaint is barred by the applicable statute of limitations set forth in 11 U.S.C. § 546 because, among other things, the Extension Orders are void as against Spartech, and the Complaint was not filed and served in a timely manner within the required timeframe, causing severe prejudice to Spartech.

C. The Complaint is barred by the doctrine of laches because Spartech lacked knowledge that the alleged claim set forth in the Complaint might be asserted by Delphi, Delphi delayed asserting the alleged claim despite the opportunity to do so, and Spartech would be severely prejudiced if the claim and the Complaint were allowed to go forward now.

D. The Complaint is barred by the doctrine of res judicata because Delphi failed to preserve the alleged cause of action set forth in the Complaint following confirmation of its plan of reorganization.

E. The Complaint is barred by judicial estoppel due to Delphi's repeated representations and assertions that it would not pursue avoidance actions, including the alleged claims set forth in the Complaint.

F. The Complaint is barred because the Extension Orders are void as against Spartech in that cause did not exist to extend the time to serve the Complaint.

G. The Complaint is barred because it was improperly filed under seal with no notice to Spartech, in violation of the requirements of 11 U.S.C. § 107.

3. In support of this Motion, Spartech relies on the points and authorities set forth in its accompanying Memorandum of Law, which is incorporated herein as part of this Motion, and the pleadings and documents referred to therein.

WHEREFORE, Spartech respectfully requests an order of this Court:

A. Vacating the Extension Orders because, among other things: (i) Delphi's intentional failure to provide Spartech with notice of the motions seeking entry of the Extension Orders violates due process and renders the Extension Orders void and unenforceable against Spartech; (ii) cause did not exist to extend the time for service of

the Complaint under the Extension Orders; and/or (iii) the Complaint was improperly filed under seal in violation of 11 U.S.C. § 107;

B. Dismissing the Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b), on the grounds that the Complaint violates Spartech's due process rights and is barred by the two-year statute of limitations set forth in 11 U.S.C. § 546;

C. Dismissing the Complaint with prejudice on the grounds that it is barred by laches, *res judicata* and/or judicial estoppel; and

D. Granting such other and further relief as is just and proper.

Dated: May 14, 2010

Respectfully submitted,

/s/ Michelle K. McMahon

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